

**REMARKS**

This paper is responsive to a non-final Office action dated December 1, 2003. Claims 1-33 were examined. Of these claims, claims 1-5, 7-9, 13-19, 21, 22, 24-29, 32 and 33 were rejected. Claims 7 and 31 were objected to because of informalities. Claims 6, 10-12, 20, 23, 30 and 31 were indicated allowable if rewritten in independent form.

**Information Disclosure Statement**

The Examiner stated that International Telecommunication Union, ITU-T Recommendation G.992.2 was not considered, as a copy was not available to the Examiner. Applicant submitted this reference with the Information Disclosure Statement sent to the U.S.P.T.O. (Commissioner for Patents) on February 1, 2001. As evidenced by the return receipt postcard (a copy of which is attached), this reference was received by the U.S.P.T.O. on February 5, 2001. For the Examiner's convenience, Applicant is forwarding a duplicate copy of this reference (attached hereto) and respectfully requests the Examiner to consider this reference and indicate such consideration by initialing the Information Disclosure Statement previously submitted on February 1, 2001.

**Allowable Subject Matter/New Claims**

Claims 6, 10-12, 20, 23, 30, and 31 were objected to as being dependent upon rejected base claims, but the Office indicated that these claims would be allowable if rewritten in independent form. Consistent with the Office's indication of allowable subject matter, the matter in original claim 10 has been presented in independent format in new claim 34, the matter in original claim 23 has been presented in independent format in new claim 43, and the matter in original claim 30 has been presented in new claim 50. New dependent claims 35-42, 44-49 and 51-55, which depend from claims 34, 43 or 50, are also presented. No new matter has been added, and all claim amendments and additions are fully supported by the specification as filed.

**Claim Objections/Informalities**

Claims 7 and 31 were objected to because of informalities. Claims 7 and 31 have been amended to correct the noted informalities. No new matter has been added by these amendments, and the amendments are fully supported by the specification as filed.

**Claim Rejections under 35 USC § 102**35 USC § 102(b) - Bremer

The Office rejected claims 1-5, 7, and 13-15 under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,311,578, issued to Bremer et al. (hereinafter "Bremer").

*Claim 1*

The Office states in item 5 that Bremer teaches a technique that compares the frequency characteristics of a received signal to the characteristics of a particular modem type if an answerback tone is detected. The comparison is performed by determining whether a low-level identification tone is present in an answer tone. Apparently, the Office is equating the low-level identification tone of Bremer with the "one or more characteristics" recited in claim 1.

Based on this assumption, the applicant submits that the Office has not pointed to any portion of Bremer that discloses or suggests sending the low-level identification tone according to a communication protocol allowing variability in the low-level communication tone. Indeed, claim 1 clearly recites, "one or more characteristics associated with one or more signals *sent*..." Consequently, determining that a signal is not sent cannot be a characteristic of a signal that is sent. Neither has the Office pointed to any portion of Bremer that discloses or suggests that if a low-level identification tone is sent, that the low-level identification tone varies for at least some implementations of the communication protocol.

Since claim 1 recites "A method comprising... the signals being sent according to a communication protocol allowing variability in the one or more characteristics, the one or more characteristics varying for at least some implementations of the communication protocol ...," and the Office has identified no portion of Bremer that discloses such a method, the applicant submits that Bremer does not teach or suggest each and every element recited in independent

claim 1. A rejection under 35 USC § 102(b) is, therefore, unsupported by Bremer, and the applicant respectfully requests the Office to withdraw its rejection of claim 1.

*Claim 3*

The Office states in item 6 of the official action that Bremer characterizes the remote modem as a particular type of modem. Based on this statement, the Office rejected claim 3, which recites in part, "the remote communication device is determined according to at least one brand, type or model." The applicant submits that even if Bremer determines that a modem is of a particular type, Bremer does not disclose or suggest determining whether a modem is of a particular brand or model. Thus, the applicant submits that Bremer does not teach or suggest each and every element recited in claim 3, and respectfully requests the Office to withdraw its rejection of this claim.

*Claim 4*

The Office states in item 7 of the official action that the remote identification process occurs during the establishment of a data connection, which includes establishing the level of connection and baud rate supported by the communication channel. By rejecting claim 4 on this basis, the Office appears to be implying that performing a remote identification process during the establishment of connection teaches that "evaluating occurs during a training phase..."

The applicant respectfully submits that even if Bremer discloses that a remote identification process occurs during the establishment of a data connection, such a disclosure does not teach or suggest that evaluating occurs during a training phase. In fact, Bremer discloses that the identification process is accomplished by combining or hiding an identification signal within an industry standard answering signal (Bremer column 2 lines 49-52), not that the identification process is accomplished during a training phase. Indeed, a training phase is a period during which training signals are used to determine line characteristics (See, e.g. Applicant's specification, page 5, line 6 - page 6, line 6), while an answering signal is used by one modem to respond to a ring signal during connection establishment (See, Bremer, col. 1, ll. 22-26), and Bremer does not disclose or suggest that an answering signal is sent during a training phase.

For at least these reasons, the applicant submits that Bremer does not teach or disclose each and every element recited in claim 4. The applicant, therefore, respectfully requests the Office to withdraw its rejection of claim 4.

*Claim 13*

The Office rejected claim 13 as being anticipated by Bremer. In response to this rejection, Claim 13 has been amended to recite, in part, "... wherein the one or more signals are sent according to a communication protocol allowing variability in the one or more characteristics..." The applicant submits that Bremer does not teach or suggest each and every element of claim 13 as amended, at least because Bremer does not teach or suggest one or more signals sent according to a communication protocol allowing variability in the one or more characteristics. The applicant, therefore, respectfully requests the Office to withdraw its rejection of claim 13 as being anticipated by Bremer under 35 USC § 102(b).

*Claims 2, 5, 7-9, 14, and 15*

For the above reasons, the applicant believes that independent claims 1 and 13 are allowable over the art of record. Inasmuch as dependent claims 2, 5, 7, 14, and 15 depend from either allowable independent claims 1 or 13, the applicant submits that dependent claims 2, 5, 7, 14, and 15 are themselves allowable, and respectfully requests the Office to withdraw its rejection of these claims.

35 USC § 102(b) – Maxwell

*Claim 13*

The Office rejected claim 13 under 35 USC § 102(b) as being anticipated by U.S. Patent No. 4,215,243, issued to Maxwell (hereinafter "Maxwell"). Claim 13 has been amended to recite, in part, "... wherein the one or more signals are sent according to a communication protocol allowing variability in the one or more characteristics..." The applicant submits that Maxwell does not teach or suggest each and every element of claim 13 as amended, at least because Maxwell does not teach or suggest one or more signals sent according to a communication protocol allowing variability in the one or more characteristics. The applicant,

therefore, respectfully requests the Office to withdraw its rejection of claim 13 as being anticipated by Maxwell under 35 USC § 102 (b).

35 USC § 102(b) - Amundson

The Office rejected claims 13-15, 24-29 and 33 under 35 USC § 102(b) as being anticipated by U.S. Patent No. 4,680,773, issued to Amundson (hereinafter "Amundson").

*Claim 13*

Claim 13 has been amended to recite, in part, "... wherein the one or more signals are sent according to a communication protocol allowing variability in the one or more characteristics..." The applicant submits that Amundson does not teach or suggest each and every element of claim 13 as amended, at least because Amundson does not teach or suggest one or more signals sent according to a communication protocol allowing variability in the one or more characteristics. The applicant, therefore, respectfully requests the Office to withdraw its rejection of claim 13.

*Claim 24*

In item 16 of the official action, the Office states that Amundson measures a parameter associated with signals sent by a remote device by sampling received characters, and comparing the sampled characters to determine if a character necessary for initiating a matched-protocol link is detected (Amundson, column 6, lines 1-5).

The applicant submits that sampling signal to determine if a particular character is embedded in the signal is not the same as measuring a parameter associated with the signal. Thus, even if Amundson discloses a receiving modem that *samples characters* to detect whether a particular character necessary for initiating a matched protocol link is present, Amundson does not teach or suggest an apparatus comprising a device operable to *measure one or more parameters* associated with one or more signals sent during a communication session with a remote device. The applicant, therefore, respectfully requests the Office to withdraw its rejection of claim 24.

*Claim 27*

Item 19 of the official action states that Amundson discloses that the signals associated with the measured parameters are sent during training or initialization of the transceiver. In particular, the Office points to column 5, lines 50-68. The applicant respectfully submits that the cited portions of Amundson do not teach or suggest that the one or more signals with which the parameters are associated are sent during at least one of the transceiver training and channel analysis, as recited generally in claim 27. The applicant, therefore, respectfully requests the Office to withdraw its rejection of claim 27.

*Claim 28*

In item 20 of the official action, the Office asserts that the presence of a character necessary for initiating a matched protocol link in Amundson teaches or suggests that the one or more parameters is the number of symbols sent, as recited generally in applicant's claim 28. The applicant respectfully submits that measuring a number of symbols sent (recited generally in claim 28) is not the same as sampling a signal to look for a particular character (Amundson, column 6, lines 1-5). The applicant, therefore, respectfully requests the Office to withdraw its rejection of claim 28.

*Claim 14-15, 25-26, 29, and 33*

For the above reasons, the applicant believes that independent claims 13 and 24 are allowable over the art of record. Inasmuch as dependent claims 2, 5, 7, 14, and 15 depend from either allowable independent claims 13 or 24, the applicant submits that dependent claims 14-15, 25-26, 29, and 33 are themselves allowable, and respectfully requests the Office to withdraw its rejection of these claims.

**Claim Rejections under 35 USC § 103**35 USC § 103(a) – Bremer

Claim 8 was rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,311,578, issued to Bremer et al. (hereinafter "Bremer"). As noted above, the applicant believes that independent claim 1 is allowable, and inasmuch as dependent claim 8 depends from

allowable independent claim 1, the applicant submits that claim 8 is itself allowable for at least that reason. The applicant, therefore, respectfully requests the Office to withdraw its rejection of claim 8.

35 USC § 103(a) - Amundson

Claims 16-19, 21, 22, and 32 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 4,680,773 issued to a Amundson (hereinafter "Amundson").

*Claim 16*

In response to the rejection, claim 16 has been amended to recite, "... wherein the one or more signals are sent according to a communication protocol allowing variability in the one or more characteristics...". The applicant submits that Amundson does not teach or suggest, alone or in combination with other cited prior art, all the elements of claim 16 as amended. The applicant, therefore, respectfully requests the Office to withdraw its rejection of claim 16.

*Claims 17-19, 21-22, and 32*

The applicant believes that independent claims 16 and 24 are allowable over the art of record. Inasmuch as dependent claims 17-19, 21 22, and 32 depend from either allowable independent claims 16 or 24, the applicant submits that dependent claims 17-19, 21-22, and 32 are themselves allowable, and respectfully requests the Office to withdraw its rejection of these claims.

CONCLUSION

In summary, claims 1-55 are in the case. All claims are believed to be allowable over the art of record, and a Notice of Allowance to that effect is respectfully solicited. Nonetheless, if any issues remain that could be more efficiently handled by telephone, the Examiner is requested to call the undersigned at the number listed below.

**CERTIFICATE OF MAILING OR TRANSMISSION**

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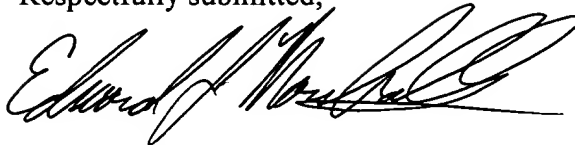
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Edward J. Marshall

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Respectfully submitted,



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